

are located laterally beyond said side edges of said absorbent chassis, and an inward edge which is located longitudinally inward from said waist edge, wherein said fit panel is configured to provide a conforming fit about a wearer's waist;

b) a pair of primary fasteners which are located on said laterally opposed outboard edges of said fit panel and which are configured to releasably engage an opposite waist region of said absorbent chassis to releasably engage said front waist region to said rear waist region to secure said absorbent article about a wearer's body; and

c) a waist size adjustment means integral with said fit panel for further conforming said waist regions to said wearer's body after said primary fasteners have been releasably engaged.

Remarks

Claims 1-44 are pending in the instant application. Claims 10, 13, 14, 30, and 31 are withdrawn from consideration. Claims 1, 20, and 37 have been amended to recite that the fit panel of the present invention is configured to provide a conforming fit about a wearer's waist. Support for this amendment appears in the specification at page 12, lines 22-29. Accordingly, claims 1-9, 11, 12, 15-29, and 32-44 form the subject matter of the response. No new matter is added by these amendments. **A Version Of The Claims With Markings To Show Changes Made** is submitted herewith as Appendix A.

Rejections Under 35 U.S.C. § 102(e)

References Do Not Disclose Each and Every Element of the Claimed Invention.

In the Final Office Action mailed May 11, 2001, the Examiner rejects claims 1-2, 7-9, 12, 15-20, 25-27, 29, 32-37, 39, and 43-44 under 35 U.S.C. § 102 (e) as allegedly being anticipated and therefore unpatentable over U.S. Patent No. 6,022,430 issued February 8, 2000 to Blenke et al. (hereinafter "Blenke"). This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

The Examiner believes that Blenke discloses a diaper with an absorbent chassis, a front waist region, a rear waist region, end edges, and side edges. The Examiner also believes that Blenke discloses a fit panel, with releasably engageable primary fasteners located on outboard edges, and a waist adjustment means that provides a pair of secondary fasteners, and a pair of perforations lines that provide the secondary fasteners.

In order to be anticipatory, a reference must explicitly or implicitly disclose each and every element of the claimed invention. Blenke relates to absorbent articles having an adjustable belt and methods of making the same. (See Col. 1, lines 6-9). The article of Blenke also includes an outer cover, an absorbent chassis, and a fastening system. (See Col. 5, lines 44-45). The fastening system includes a pair of primary fasteners, an adjustable belt, a pair of secondary fasteners attached to laterally opposed end portions of the adjustable belt, and a pair of belt loops. (See Col. 5, lines 50-53).

Claims 1, 20 and 37 of the present invention, as amended, are directed to a disposable absorbent article that includes an absorbent chassis that defines a front waist region, a rear waist region, a crotch region that extends between and connects the waist regions, a pair of longitudinally opposed end edges and a pair of laterally opposed side edges. The absorbent article also includes at least one fit panel, located in at least one of the waist regions of the absorbent chassis, that is configured to provide a conforming fit about a wearer's waist. The absorbent article further includes a pair of primary fasteners that are located on the laterally opposed outboard edges of the fit panel and that are configured to releasably engage an opposite waist region of the absorbent chassis. The absorbent article also includes a pair of laterally directed perforation lines on at least one of two laterally opposed sides of the fit panel to provide at least one secondary fastener tab. The secondary fastener tab is configured to releasably engage the opposite waist region to further conform the waist regions to the wearer's body after the primary fasteners have been releasably engaged.

Blenke does not disclose (either explicitly or implicitly) each and every element of the claimed invention. That is, Blenke does not disclose an article including at least one fit panel which is located in one of the waist regions that is configured to provide a conforming fit about a wearer's waist. Instead, Blenke discloses belt loops ("70") that the Examiner asserts disclose a fit panel. Applicants disagree. At Col. 6, lines 20-25, Blenke states that the belt loops disclosed therein attach and slidably contain the adjustable belt to the outer cover ("The web of adjustable belts 98 is cut into discrete adjustable belts which are attached to a web of outer cover material 110 at spaced apart locations using belt loops 70 such that the adjustable belt is slidably contained between the outer cover 42 and the belt loops 70."). Blenke does not at any time disclose a fit panel as described in the present invention. In particular, Blenke does not disclose a fit panel that is configured to provide a conforming fit about a wearer's waist. Accordingly, the fit panel of the present invention is different and distinguishable from the belt loops of Blenke. The belt loops of Blenke attach and slidably contain the adjustable belt to the outer cover, and do not provide a conforming fit about a wearer's waist. Therefore, Blenke does not disclose each and every element of the invention as claimed. For at least these reasons, Applicants respectfully submit that

independent claims 1, 20 and 37, as amended, are patentable over Blenke. Moreover, claims 2, 7-9, 12, 15-19, 25-27, 29, 32-36, 39, and 43-44, which depend from the above independent claims, are also accordingly patentable over Blenke. Based on the foregoing, Applicants respectfully request that the rejection under 35 U.S.C. §102(e) be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Blenke and Vogt do not Teach or Suggest all the Claim Limitations.

In the Final Office Action mailed May 11, 2001, the Examiner rejects claims 11, 28, and 42 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Blenke in view of U.S. Patent No. 6,149,638 issued November 21, 2000 to Vogt et al. (hereinafter "Vogt"). This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

The Examiner acknowledges that Blenke does not disclose a diaper outercover being made of a necked nonwoven material. However, the Examiner believes that Vogt discloses an absorbent article having an extensible outercover being made of necked nonwoven spunbonded material. Vogt is directed to an absorbent article having an absorbent core, an extensible outercover and a folded layer of material having at least one fold. The folded layer has surfaces adjacent the absorbent core and the extensible outer cover. A pattern of adhesive is disposed at least in part between the folded layer and the outer cover and mounts the folded layer to the outer cover. The folded layer is mounted to the outer cover in such a way that when the outer cover extends, the folded layer can extend with the outer cover by opening of the fold. The folded layer does not tear or otherwise release superabsorbent materials from the absorbent core. (See Col. 1, line 59 to Col. 2, line 4.). A preferred material for the outer cover layer can include an extensible film material laminated to a necked nonwoven spunbound material. (See Col. 8, lines 2-5.). The Examiner believes it would have been obvious to one of ordinary skill in the art at the time the invention was made "to have the outercover of the diaper of Blenke, being made of a necked non-woven material, as disclosed by Vogt, in order to make the outercover extensible so the absorbent pad does not tear, and absorbent material does not spill out of the article" Applicants respectfully disagree.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. Claims 11, 28, and 42 of the present invention are directed to an absorbent article

having an absorbent chassis including an outercover which comprises a necked nonwoven material. In addition, claims 11, 28, and 42 depend from independent claims 1, 20, and 37 respectively. As such, claims 11, 28 and 42 include all of the elements of independent claims 1, 20 and 37. In particular, claims 11, 28 and 42 are also directed to a disposable absorbent article absorbent chassis that includes at least one fit panel that is located in at least one of the waist regions and is configured to provide a conforming fit about a wearer's waist.

As described above, Blenke does not disclose a fit panel that is configured to provide a conforming fit about a wearer's waist, or as acknowledged by the Examiner, an outercover made of necked-nonwoven material. However, Vogt fails to correct the deficiencies of Blenke. That is, Vogt does not teach or suggest a fit panel that is configured to provide a conforming fit about a wearer's waist. As such, combining the references of Blenke and Vogt would not result in the articles of the present invention as claimed. At best, such a combination would result in the article of Blenke having an outercover as described in Vogt. Such an article would not include at least one fit panel configured to provide a conforming fit about a wearer. Therefore, for at least these reasons, Applicants submit that claims 11, 28 and 42 are patentable over Blenke in view of Vogt, and respectfully request that the rejection under 35 U.S.C. §103(a) be withdrawn.

The Combination of Blenke and Brandon Do Not Teach or Suggest Each of the Claim Limitations, and the Proposed Modification Would Destroy Intended Function of Reference.

In the Final Office Action mailed May 11, 2001, the Examiner rejects claims 3-6, 21, 23-24, and 38-41 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Blenke in view of U.S. Patent No. 5,916,203 issued June 29, 1999 to Brandon et al. (hereinafter "Brandon"). This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

The Examiner acknowledges that Blenke fails to teach the use of a fit panel elongating at least 50% and comprising latent elastic material, an elastic member, and an elastomeric material. However, the Examiner believes that Brandon discloses a composite material with elasticized portions that can be used in the elastic parts of absorbent articles and that includes a latent material (14) and an elastic material (12) including an elastomeric material and having an elongation from 50% to 150%. Brandon discloses an absorbent article having at least one temperature sensitive elastic material (depicted by reference numeral "12"), an absorbent layer located in superposed relation to the temperature sensitive elastic material, and a microwave sensitive material (depicted by reference numeral "14") located on selected regions of the temperature sensitive elastic material ("12"). (See Col. 2, lines 17-22). The selected regions of the temperature sensitive elastic material ("12") are activated by applying microwave energy to the

article thereby heating the microwave sensitive material ("14") to create elasticized portions. (See Col. 2, lines 17-26). The Examiner believes it would have been obvious to one of ordinary skill in the art at the time the invention was made "to have the fit panel of Blenke comprise the material and elongate as disclosed by Brandon, in order for the elasticized portions to conform the garment to the wearer's body and prevent leakage." Applicants respectfully disagree.

The criteria for a *prima facie* case of obviousness are set forth above. Claims 3, 21, and 39 are directed to an absorbent article having at least one fit panel that includes a latent elastic material. Claims 4 and 40 are directed to an absorbent article having at least one fit panel including at least one elastic member that is applied to the fit panel in a pretensioned configuration. Claims 5, 23 and 41 are directed to an absorbent article having at least one fit panel in which the fit panel is designed to elongate in a lateral direction at least about 30 percent to assist in positioning the absorbent article about a wearer's waist. Claims 6 and 24 are directed to an absorbent article having at least one fit panel in which the fit panel is designed to elongate in a lateral direction at least about 50 percent to assist in positioning the absorbent article about a wearer's waist. Claim 38 is directed to an absorbent article having at least one fit panel in which the fit panel is elastomeric. In addition, all of the above claims are dependent from independent claims 1, 20 and 37. As such, claims 3-6, 21, 23-24, and 38-41 are directed to absorbent articles that include at least one fit panel that is configured to provide a conforming fit about a wearer's waist.

As described above, Blenke does not disclose a fit panel that is configured to provide a conforming fit about a wearer's waist, or as acknowledged by the Examiner, the use of a fit panel comprising latent elastic material, an elastic member, an elastomeric material, or a fit panel that is designed to elongate. However, Brandon fails to correct the deficiencies of Blenke. That is, Brandon does not teach or suggest a fit panel that is configured to provide a conforming fit about a wearer's waist. As such, combining the references of Blenke and Brandon would not result in the articles claimed by the present invention. At best, such a combination would result in the article of Blenke having temperature sensitive elastic material ("12") and the microwave sensitive material ("14") of Brandon, which would not include at least one fit panel configured to provide a conforming fit about a wearer.

Moreover, the proposed modification of the article of Blenke as suggested by the Examiner would destroy the intended function of Blenke. That is, the Examiner suggests that the belt loops of Blenke (interpreted to be a fit panel by the Examiner) could be made to "...comprise the material and elongate as disclosed by Brandon, in order for the elasticized portions to conform the garment to the wearer's body and prevent leakage." It is unclear to the Applicants how elasticizing the belt loops of Blenke would conform the garment to the wearer's body, and it is also unclear to Applicants as to how elasticizing the belt loops could possibly prevent leakage.

On the contrary, Applicants respectfully submit that such a modification would destroy the function of the belt loops as described in Blenke. In particular, at Col. 6, lines 20-25, Blenke states that the belt loops disclosed therein attach and slidably contain the adjustable belt to the outer cover ("The web of adjustable belts 98 is cut into discrete adjustable belts which are attached to a web of outer cover material 110 at spaced apart locations using belt loops 70 such that the adjustable belt is slidably contained between the outer cover 42 and the belt loops 70."). The modification suggested by the Examiner would compromise the ability of the belt loops of Blenke to attach and slidably contain the adjustable belt to the outer cover. Instead, such a modification would result in belt loops that would allow the adjustable belt to pull away from the outer cover. As such, belt loops comprising the characteristics of the material described in Brandon could undesirably result in a garment that may sag and gap at the outer cover when the adjustable belt is conformed about the wearer. Clearly, such an arrangement would destroy the intended function of Blenke, which describes the use of the adjustable belt at Col. 14, lines 19-22: "...the adjustable belt 64 and secondary fasteners 66 of the diaper 20 of the present invention are configured to conform the waist regions of the diaper 20 to the wearer...." Therefore, Applicants submit that claims 3-6, 21, 23-24, and 38-41 are patentable over Blenke in view of Brandon, and respectfully request that the rejection under 35 U.S.C. §103(a) be withdrawn.

In conclusion, Applicants recognize that the Office Action mailed May 11, 2001 was a Final Office Action, and respectfully request the Examiner to enter the amendments to the claims made herein, as Applicants submit that the amendments directly address the rejections made by the Examiner. In view of the above amendments and remarks, reexamination, reconsideration and withdrawal of the rejections of claims 1-9, 11, 12, 15-29, and 32-44 under 35 U.S.C. §§ 102 and 103 are respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in condition for allowance and such action is earnestly solicited. If the Examiner has any questions or if there are any remaining issues that can be handled by telephone, the Examiner is invited to contact the undersigned at (920) 721-2433.

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account. A duplicate of this sheet is provided.

Respectfully submitted,

LAURA L. ELSBERG ET AL.

By:

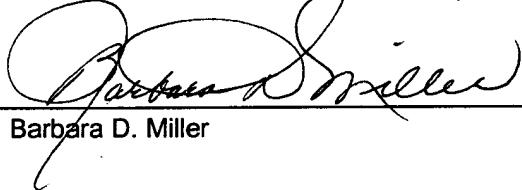


Thomas M. Gage
Registration No.: 33,385
Attorney for Applicants

CERTIFICATE OF MAILING

I, Barbara D. Miller, hereby certify that on July 9, 2001 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Box AF, Assistant Commissioner for Patents, Washington, D.C. 20231.

By:



Barbara D. Miller

Version Of Amended Claims With Markings To Show Changes Made

1. (Once amended) A disposable absorbent article comprising an absorbent chassis which defines a front waist region, a rear waist region, a crotch region which extends between and connects said waist regions, a pair of longitudinally opposed end edges, and a pair of laterally opposed side edges, said absorbent article further comprising:

- d) at least one fit panel which is located in one of said waist regions of said absorbent chassis and which defines a waist edge, a pair of laterally opposed outboard edges which are located laterally beyond said side edges of said absorbent chassis, and an inward edge which is located longitudinally inward from said waist edge, wherein said fit panel is configured to provide a conforming fit about a wearer's waist;
- e) a pair of primary fasteners which are located on said laterally opposed outboard edges of said fit panel and which are configured to releasably engage an opposite waist region of said absorbent chassis to releasably engage said front waist region to said rear waist region to secure said absorbent article about a wearer's body; and
- f) a pair of laterally directed perforation lines on at least one of two laterally opposed sides of said fit panel to provide at least one secondary fastener tab, said secondary fastener tab being configured to releasably engage said opposite waist region to further conform said waist regions to said wearer's body after said primary fasteners have been releasably engaged.

20. (Once Amended) A disposable absorbent article comprising an absorbent chassis which defines a front waist region, a rear waist region, a crotch region which extends between and connects said waist regions, a pair of longitudinally opposed end edges, and a pair of laterally opposed side edges, said absorbent article further comprising:

- a) at least one fit panel which is located in one of said waist regions of said absorbent chassis and which defines a waist edge, a pair of laterally opposed outboard edges which are located laterally beyond said side edges of said absorbent chassis, and an inward edge which is located longitudinally inward from said waist edge, wherein said fit panel is configured to provide a conforming fit about a wearer's waist;
- b) a pair of primary fasteners which are located on said laterally opposed outboard edges of said fit panel and which are configured to releasably engage an opposite waist region of

said absorbent chassis to releasably engage said front waist region to said rear waist region to secure said absorbent article about a wearer's body; and

c) a pair of laterally directed perforation lines on each of two laterally opposed sides of said fit panel to provide a pair of laterally opposed secondary fastener tabs, said secondary fastener tabs being configured to releasably engage said opposite waist region to further conform said waist regions to said wearer's body after said primary fasteners have been releasably engaged.

37. (Once Amended) A disposable absorbent article comprising an absorbent chassis which defines a front waist region, a rear waist region, a crotch region which extends between and connects said waist regions, a pair of longitudinally opposed end edges, and a pair of laterally opposed side edges, said absorbent article further comprising:

a) at least one fit panel which is located in one of said waist regions of said absorbent chassis and which defines a waist edge, a pair of laterally opposed outboard edges which are located laterally beyond said side edges of said absorbent chassis, and an inward edge which is located longitudinally inward from said waist edge, wherein said fit panel is configured to provide a conforming fit about a wearer's waist;

b) a pair of primary fasteners which are located on said laterally opposed outboard edges of said fit panel and which are configured to releasably engage an opposite waist region of said absorbent chassis to releasably engage said front waist region to said rear waist region to secure said absorbent article about a wearer's body; and

c) a waist size adjustment means integral with said fit panel for further conforming said waist regions to said wearer's body after said primary fasteners have been releasably engaged.